

Summary  
Environmental Rules Board  
Indiana Government Center South  
Conference Center Room 22  
Indianapolis, Indiana  
Wednesday, August 10, 2016

**1. CALL TO ORDER**

Chair Beverly Gard called the meeting to order at 1:30 p.m. A quorum was present.

Members present: Commissioner Carol Comer; Calvin Davidson; Gary Powdrill; Dr. Joanne Alexandrovich; Chris Horn; William Etzler; Dr. Ted Niemiec; Devin Hillsdon-Smith; Gail Boydston; Ken Rulon; and Kelly Carmichael.

**2. APPROVAL OF MEETING SUMMARY**

Chair Gard called for approval of the May 11, 2016, meeting summary, which was approved as presented.

**3. REPORTS**

Commissioner's Report

Commissioner Comer announced executive staff changes: Bruce Palin, Assistant Commissioner, Office of Land Quality (OLQ), retired; Roger Letterman, Deputy Assistant Commissioner, Office of Air Quality (OAQ), is moving to a Section Chief position in OAQ; Julie Lang, OLQ Assistant Deputy Commissioner, is moving as Attorney to Office of Legal Counsel (OLC); Amy Smith will be OLQ Deputy Assistant Commissioner, Underground Storage Tanks; Steve Howell, Office of Chief of Staff, Director, Government and Community Affairs, is leaving IDEM. There were no questions from the Board.

Rules Update

Ms. Chris Pedersen, Section Chief, Rules Development Branch (RDB), Office of Legal Counsel (OLC), spoke on the rulemakings that would come before the next Environmental Rules Board (ERB) meeting, probably November 9, 2016, which will be held in Conference Center Room A. She said that the IN Government Center South Building's permanent public entrance will be 10 North Senate Avenue.

**4. RULEMAKING ACTIONS**

Total Coliform Revisions Emergency Rule

Chair Gard opened the discussion for adoption of the Total Coliform Revisions Emergency Rule which temporarily amends 327 IAC 8-2, 327 IAC 8-2.1, 327 IAC 8-2.3, and 327 IAC 8-2.5. Ms. MaryAnn Stevens, Rule Writer, RDB, OLC, spoke for the agency and explained that IDEM is asking the board to adopt the emergency rule to incorporate federally required revisions to the Total Coliform Rule under the Safe Drinking Water Act. She said the Board would be asked to consider preliminary adoption of the Revised Total Coliform Rule in a separate board action to make the rules a permanent part of Title 327. Ms. Stevens explained the Revised Total Coliform Rule also updates provisions in other drinking water rules that reference analytical methods and other requirements in the 1989 Total Coliform Rule.

There were no questions and no board discussion. There were no commenters.

Mr. Rulon moved to adopt the emergency rule and Mr. Hillsdon-Smith seconded. The emergency rule was adopted unanimously.

#### Coal Combustion Residuals Emergency Rule

Chair Gard opened the discussion for adoption of the Coal Combustion Residuals Emergency Rule at 329 IAC 10. Ms. Lauren Aguilar, Rule Writer, RDB, OLC, said this rule is an extension of emergency rules that were previously adopted by the Board. She reviewed revisions made to this emergency rule being presented. She said IDEM is requesting adoption of the emergency rule so that the Department can pursue an amendment to the Solid Waste Management Plan. Ms. Aguilar noted some differences between this emergency rule compared to the permanent rule to be presented later in the meeting. One change was due to last-minute comments received from the U.S. EPA. She stated that this rule is incorporating 40 CFR 257 Subpart D and is intended to fill the gap while working on the permanent rulemaking.

There were no questions and no board discussion. There were no commenters.

Mr. Carmichael moved to adopt the emergency rule and Mr. Rulon seconded. The emergency rule was adopted unanimously.

#### LSA #16-208, Title 326 CFR Update

Chair Gard opened the discussion for adoption of amendments to 326 IAC 1-1-3, Title 326 CFR Update. Ms. Keelyn Walsh, Rule Writer, RDB, OLC, spoke for the agency and explained that the rule is meant to update the yearly edition of the Code of Federal Regulations referenced in 326 IAC 1-1-3, to the 2015 edition. The current reference in the rule is to the July 1, 2013 edition. Since that date, several new federal regulations have been promulgated that are not reflected in the current version of Title 326 of the IAC. By updating the reference date to July 1, 2015, IDEM is incorporating by reference the latest version of the CFR with the exception of those regulations most recently published in the Federal Register. She said this will ensure that Title 326 of the IAC will be consistent with those regulations that the federal government promulgated between July 1, 2013 and June 30, 2015.

There was board discussion. There were no commenters.

Mr. Powdrill moved to adopt the rule and Mr. Davidson seconded. By a roll call vote, the rule was adopted unanimously.

#### LSA #16-93, Hazardous Waste Updates

Chair Gard opened the hearing for final adoption of amendments to 329 IAC 3.1, Hazardous Waste Updates. Mr. Dan Watts, Rule Writer, RDB, OLC, spoke for the agency. He said the rulemaking proposes updates to the hazardous waste rules at 329 IAC 3.1 with the incorporation by reference of recent federal hazardous waste rules promulgated by the U.S. EPA. He said IDEM must maintain requirements that are consistent with, and no less stringent than, the federal hazardous waste requirements. He explained the rulemaking proposes technical amendments and corrections throughout 329 IAC 3.1 for incorporation by reference language, statutory citations, contact information, technical errors, and outdated requirements. He described recent amendments to federal hazardous waste requirements included in U.S. EPA final rules that IDEM is proposing to incorporate. After comments received during the comment period, he said IDEM has made amendments to clarify some requirements.

There were no questions and no board discussion. There were no commenters.

Mr. Rulon moved to adopt the rule and Mr. Davidson seconded. By a roll call vote, the rule was final adopted unanimously.

#### LSA #16-162, Lawrenceburg Township, Dearborn County Emission Reporting

Chair Gard opened the hearing for adoption of amendments to 326 IAC 2-6-1, Lawrenceburg Township, Dearborn County Emission Reporting. Ms. Keelyn Walsh spoke for the agency. She said the rulemaking is to amend the emission reporting rule at 326 IAC 2-6 to apply the reporting thresholds for nonattainment areas to the 8-hour ozone nonattainment area of Lawrenceburg Township, Dearborn County. Ms. Walsh said this rulemaking is a part of the redesignation process and said when the rule is completed, it will be submitted to U.S. EPA with the redesignation request for approval into the Indiana State Implementation Plan (SIP). She said redesignating the area to attainment will allow affected sources to be permitted under the Prevention of Significant Deterioration (PSD) program under 326 IAC 2-2 instead of the emission offset programs under 326 IAC 2-3, which will provide cost savings for sources.

There was board discussion. There were no commenters. The hearing was concluded.

With a roll call vote, the board voted unanimously to adopt the rule.

#### LSA #16-217, Coal Combustion Residuals

Chair Gard opened the hearing for final adoption of amendments to 329 IAC 10-3-1 and 329 10-9-1, Coal Combustion Residuals. Ms. Lauren Aguilar spoke for the Agency. She said this rulemaking addresses coal combustion residual impoundments. She stated that on October 19, 2015, 40 CFR 257, subpart (d) became effective and that interested stakeholders asked IDEM to amend the Solid Waste Management Plan to incorporate subpart (d) in order to work more directly with them on such things as compliance schedules. Ms. Aguilar stated that to proceed with the Solid Waste Management Plan, IDEM must demonstrate that it has enforcement authority over 40 CFR, subpart (d), which has been shown through the Board's adoption of the emergency rules. She reviewed the few changes to this version, which were discussed previously during the emergency rule.

Gary Powdrill said in the Draft Rule, Item 8, page 2, there was a word missing. Mr. Powdrill moved to amend Section 8 by adding the word "under", and Mr. Rulon seconded. By a voice vote, the Draft Rule was amended unanimously.

Commenter Bowden Quinn, Sierra Club, said there was much public interest in the coal ash problem, especially the public who live in areas around these coal ash disposal units. He said they would like to see the Board become more involved in the coal ash situation, possibly forming a work group. Mr. Quinn discussed the closure of the ponds around the Harding Street plant, and he said the Hoosier Environmental Council (HEC) obtained 400 petition signatures requesting clean closure.

Commenter Dr. Indra Frank, Director of Environmental Health and Water Policy, Hoosier Environmental Council (HEC), said it was their understanding that there will be a longer process of revision of the Solid Waste Management Rules, which they are planning to follow closely. She outlined some of the points that HEC is planning to pursue, such as composite liner requirement, coal ash storage, the use of boron in monitoring ground water, and financial assurance regulations. Dr.

Frank said they were concerned about a statement in IDEM's plan about granting extensions on complying with the federal coal ash rule. She said according to the U.S. EPA, such extensions can only be granted after the state's revised Solid Waste Management Plan has been approved by the U.S. EPA. Gary Powdrill asked Dr. Frank which beneficial uses they want restricted. Dr. Frank replied the use of coal ash for fill or soil amendment.

Tim Maloney, Hoosier Environmental Council, made additional comments regarding the letter submitted to IDEM on the Solid Waste Management Plan. He said regarding the concerns about beneficial use of coal combustion residuals (encapsulated or unencapsulated use), if the ash is encapsulated in other substances, such as asphalt or road materials, the risk of the metals leaching out is greatly reduced.

Dr. Niemiec asked for IDEM to respond to the comments as they are relevant to this rule and/or upcoming actions. Jeff Sewell, Branch Chief, OLQ Permits, said the emergency rule and amendments adopted at this meeting allow IDEM to enforce the federal requirements for CCR impoundments, variances and compliance schedules.

Mr. Carmichael moved to final adopt the rule as amended. Mr. Davidson seconded. With a roll call vote, the rule was final adopted unanimously as amended.

#### LSA #14-59, Total Coliform Revisions

Chair Gard opened the hearing for preliminary adoption of amendments to 327 IAC 8, Total Coliform Revisions. Ms. MaryAnn Stevens spoke for the Agency and asked the Board to preliminarily adopt the federally required revisions to the Total Coliform Rule. She stated that an emergency rule has been in place since February to temporarily provide for the requirements. She said failure to adopt the revised Total Coliform Rules may result in loss of primacy to conduct the state's drinking water program, loss of federal funding for the drinking water programs, and regulated entities would still be required to comply with the federal standards, but without the support, training or educational assistance provided by IDEM's drinking water programs. The rulemaking also updates provisions in other drinking water rules that reference analytical methods and other requirements in the 1989 Total Coliform Rule, i.e. Public Notification and Ground Water Rules.

There was board discussion. The hearing was concluded. Mr. Etzler moved to preliminarily adopt the rule. Mr. Horn seconded. By a voice vote, the rule was preliminarily adopted unanimously.

#### LSA #15-326, Startup, Shutdown, and Malfunctions

Chair Gard opened the hearing for preliminary adoption of amendments to 326 IAC 1-6 and 326 IAC 2-9-1. Jack Harmon, Rule Writer, RDB, OLC, spoke for the Agency. Mr. Harmon said the Startup, Shutdown, and Malfunctions (SSM) rules describe how owners and operators of industrial processes treat excessive emissions from their processes during periods of startup, shutdown, and malfunctions. He explained how excessive emissions can occur during certain times and that Indiana rules provide an exemption for noncompliance with emission limitations could be allowed during certain SSM events. He said that on June 12, 2015, the U.S. EPA published its findings in the Federal Register taking actions against 36 states including Indiana, regarding deficiencies to SSM provisions within the state rules. He said the State Implementation Plan (SIP) call directed states, including Indiana, to correct specific instructions and provisions in the SIPs regarding the treatment of these excess emissions to be consistent with the Clean Air Act.

There was much board discussion.

Mr. Hillsdon-Smith moved to preliminarily adopt the rule. Mr. Davidson seconded. By a voice vote, the rule was preliminarily adopted unanimously.

#### LSA #16-4, Definition of “Interference”

Chair Gard opened the hearing for preliminary adoption of amendments to 327 IAC 5-7-11, Definition of “Interference”. Ms. MaryAnn Stevens spoke for the Agency. She provided a history of this rulemaking beginning with a response to a citizen’s petition under Indiana Code 13-14-8-5 requesting revision of the definition of “interference” as it relates to a publicly-owned treatment works (POTW). After discussions at several board meetings, the Board directed IDEM to conduct a rulemaking to revise the definition at 327 IAC 5-17-11 to be consistent with the federal definition at 40 CFR 403.3, subsection (k). Ms. Stevens explained the existing definition of “interference” and said the revision will make the rule consistent with the federal definition, intending to give more certainty to a POTW as to what interference is.

Commenter Dr. Bill Beranek spoke on behalf of petitioners for the “Interference” rule and asked for adoption of the rule.

Mr. Powdrill moved to preliminarily adopt the rule. Mr. Davidson seconded. By a voice vote, the rule was preliminarily adopted 10-1.

### **5. HEARING**

#### LSA #16-139 and LSA #16-143, IC 13-14-9.5-1.1 2016 Hearing on Non-Expiring Rules

Chair Gard opened the hearing on rules that do not expire under IC 13-14-9.5-1.1. She stated that the non-expiring rules were not subject to the sunset provisions of IC 13-14-9-5 and discussed how these rules are required every seven years to be public noticed for comments before coming to the board. She said a notice was published in the Indiana Register with a request for written comments, and no comments were received for any of the rules listed in the notices.

There were no commenters and no board discussion. The hearing was concluded.

Chair Gard explained that the Board must determine whether any of the listed rules needed to be reviewed under the regular rulemaking process, and called for a motion on rulemaking. Mr. Rulon moved that there be no further action on these rules and Mr. Carmichael seconded. By a voice vote, the Board unanimously voted to take no further action on these rules.

### **6. ABOVE GROUND STORAGE TANK ADVISORY REPORT**

The final report from the Above Ground Storage Tank Advisory Group was presented to the Board. The group was initiated by Chair Gard to gather information and discuss the best way to implement the rulemaking requirements of Senate Enrolled Act (SEA) 312 regarding protection of the surface water drinking water supply through above ground storage tank reporting requirements and public water supply threat assessments. Chair Gard thanked those who served on the advisory group and those who provided information to the group. Copies of the report were distributed to board members and were also available at the sign-in table. The report will also be available on IDEM’s website.

### **7. OPEN FORUM**

There were no questions for the open forum.

## **8. ADJOURNMENT**

The next meeting is tentatively scheduled for 1:30 p.m. EST on November 9, 2016, at the Indiana Government Center South Conference Room A. Chair Gard adjourned the meeting at 3:15 p.m.

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### **CHAIRPERSON**

The summary is derived from Rules Development Branch staff members' notes. A typewritten transcript of the entire meeting is on file in the Office of Legal Counsel, Indiana Department of Environmental Management and will be made available on the IDEM rules website. To view approved summaries, you may go online to <http://www.in.gov/idem/4696.htm>.